

### **REMARKS**

Claims 1, 4-6, 9, 10, 14-22 are pending. Claims 14-22 have been withdrawn from consideration. Claims 4 and 9 are allowed. Reconsideration and allowance based on the following remarks are respectfully requested.

#### **Election/Restriction**

The Examiner asserts that claims 21 and 22 are directed to a distinct invention from the invention as originally claimed. Specifically, the Examiner asserts that the recitation of, "wherein non-reproducing areas of the odd numbered recording layers are mutually aligned in the thickness direction of the test recording areas of the even numbered layers and vice versa" is not found in the originally elected claims.

Applicants note that while elements of the invention may not be specifically recited in the original elected claims, it does not label these elements and features as not being part of the originally elected invention. Various elements and features of the claims found in the specification are part of the originally elected invention but not recited in the claims *per se*. Applicants respectfully submit that claims 21 and 22 include features similar to claims 1, 4-6, 9 and 10 with the addition of the above noted features which encompass the originally elected claimed invention. It is Applicants' right to add features discussed in the specification and not already recited in the claims to the claims in order to overcome teachings of the prior art. This is part of the process of determining the broadest claim scope allowable for Applicants' invention. Claims 21 and 22 are no different and thus, while they are new claims, they encompass the inventive concept originally presented. Applicants respectfully submit that these claims should be included in the examination of the present application along with claims 1, 4-6, 9 and 10.

#### **Prior Art Rejection**

Claims 1, 5, 6 and 10 stand rejected under 35 U.S.C. § 103(a) in view of Lee et al., (U.S. Patent No. 7,274,638) and Shoji et al., (U.S. Patent Publication No. 2003/0137915). This rejection is respectfully traversed.

In the Office Action the Examiner asserts that Lee fails to teach or suggest “test recording areas in the odd-numbered recording layers are formed adjacent one of the innermost circumference and the outermost circumference of the optical disc, and the test recording areas in the even-numbered recording layers are formed adjacent another one of the innermost circumference and the outermost circumference of the optical disc.” The Examiner has provided Shoji to provide teachings of this feature.

Figure 10 of Shoji is relied upon to provide this teaching. Figure 10, discussed at paragraph 157-163, refers to providing a test recording area in each layer at a different radial position. Each layer includes a test recording area, but its location in the radial direction of the disc is different from each other layer. Paragraphs 157 and 164 state, respectively:

“A test recording area in each recording layer may be located at a different radial position as shown in FIG. 10”  
and “the test recording area 1007 is provided at the outside circumference side with respect to the radial direction.”

It appears that the Examiners rejection is based on the figures by themselves without reference to the disclosure explaining these figures. As illustrated in Figure 10 with respect to the two test recording areas 1007 and 1008 discussed therein, test recording area 1007 is provided in the first recording layer 1004. Test recording area 1008 is provided in second recording layer 1002. Thus, what Shoji teaches is nothing more than “different positions” or in other words, one that is more outside than the other. Thus, the test recording area can be provided at different radial positions with respect to other recording layers, as shown in Figure 10. However, Shoji does not teach or suggest the use of test recording areas being formed adjacent the innermost circumference or outermost circumference of the optical disc for each of the odd and even layers, with all its advantages as described on page 22 of Applicants’ specification.

In view of the above, Applicants respectfully submit that the combination of Lee and Shoji fail to teach each of the features of independent claims 1 and 6 as required.

Accordingly, reconsideration and withdrawal of the rejections are respectfully requested.

**CONCLUSION**

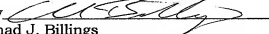
For the reasons set forth above, Applicants respectfully submit that claims 1, 4-6, 9, 10, 21 and 22 are in condition for allowance. Favorable consideration and prompt allowance are earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Chad J. Billings, Reg. No. 48,917, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.147; particularly, extension of time fees.

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Respectfully submitted,

By   
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